IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 26TH MARCH 2007 / 5TH CHAITHRA 1929

WA.No. 228 of 2007()

APPELLANT: PETITIONER

J.VALSALA, SANSKRIT TEACHER,
B.E.M.U.P. SCHOOL, PARAPPERI,
P.O..THRIPRANGODE, MALAPPURAM DISTRICT.

BY ADV. SRI.V.RAJENDRAN

RESPONDENTS: RESPONDENTS
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1. THE CORPORATE MANAGER OF ALL C.S.I.
SCHOOLS IN MALABAR AND WYNAD,
BANK ROAD CALICUT.

2. DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM.

3. G.PADMAKUMARI AMMA, SANSKRIT TEACHER,
B.E.M.U.P. SCHOOL, THRIKKIDEERI,
OTTAPPALAM, PALAKKAD DISTRICT.

BY GOVERNMENT PLEADER SRI.SANDESH RAJA
SRI.GEORGE ABRAHAM

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 15/03/2007, A/W W.A.NO.518/2007, THE COURT ON 26/03/2007 DELIVERED THE FOLLOWING:

P.R.Raman & Antony Dominic, JJ.
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W.A.Nos. 228 & 518 of 2007
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Dated this the 26th day of March, 2007

JUDGMENT

Antony Dominic,J.

These two writ appeals arise out of the judgment of a learned single Judge in W.P.(C) No.21569 of 2006, former filed by the petitioner and the latter filed by the third respondent in the Writ Petition mentioned above. The main prayer in the Writ Petition was to quash Exts.P4 and P10 and to direct the first respondent in W.A.No.228 of 2007, the Corporate Manager, to transfer the petitioner in the Writ Petition and post her as Sanskrit Teacher at B.E.M.U.P. School, Thrikkideeri or at Ottappalam.

2. The petitioner in the Writ Petition is a Sanskrit Teacher in the service of the first respondent Corporate Manager, having more than 30 years of service. Since 1997, she has been working at Parapperi. She has been requesting for a transfer nearer to her home and eventually by Ext.P1 order of the Director of Public Instructions, the Manager was directed to consider her claim for transfer, in accordance with Rule 10 of Chapter XIV A of Kerala Education Rules (hereinafter

referred to as "K.E.R."). As her efforts did not yield any result, she pursued the matter with the Government and succeeded in getting Ext.P2 order issued, again directing the Manager to take action pursuant to Ext.P1. Even thereafter, according to her, as the Manager was still adopting an indifferent attitude, she filed W.P.(C) No.6863 of 2004, which was disposed of by Ext.P3 judgment directing the Corporate Manager to take follow up steps on the aforesaid orders within a period of one month from the date of receipt of a copy of that judgment.

3. The petitioner would contend that under the compelling circumstances as detailed above, the Manager was constrained to consider her request and by Ext.P4 order, for reasons, which are totally irrelevant and extraneous, the Manager conveyed his decision to reject the petitioner's request for transfer. She pursued the matter in appeal with the Director of Public Instructions by filing Ext.P5 and obtained Ext.P6 order, which though upheld her claim for transfer, declined her request on account of want of vacancy in the B.E.M.U.P. School, Thrikkideeri. Seeking to quash Ext.P6, she again filed a Writ Petition before this Court as W.P.(C) No.35358 of 2005, which was finally disposed of as per Ext.P8 judgment by which Ext.P6 appellate order passed by the Director of Public Instructions was quashed and it

was directed that a fresh decision shall be taken after hearing all parties. Though asserting her right to get a positive direction from this Court, the petitioner filed W.A.No.960 of 2006, a Division Bench of this Court by Ext.P9 judgment declined to interfere with the judgment of the learned single Judge. Finally, the Director of Public Instructions heard the matter afresh as directed by the learned single Judge and rendered Ext.P10 order rejecting her claim for transfer once again. It was challenging Exta.P4 and P10 orders of the Manager and the Director of Public Instructions that the petitioner filed the Writ Petition.

4. After hearing the arguments on both sides, a learned single Judge of this Court by judgment dated 8.1.2007 disposed of the Writ Petition setting aside Ext.P10 and directing the Director of Public Instructions to reconsider the matter after hearing the parties in accordance with law. Once again contending that the learned single Judge after setting aside the impugned order erred in remitting the matter for reconsideration, the petitioner in the Writ Petition has filed W.A. No.228 of 2007. The third respondent in the Writ Petition, the Sanskrit Teacher, presently working at Thrikkideeri, who will be unseated in the event the request of the petitioner is granted and who was also contesting the case throughout, has filed W.A.No.518 of

2007, in as much as she is aggrieved by the judgment of the learned single Judge, in so far as Ext.P10 order of the Director of Public Instructions was quashed.

5. We have heard counsel for the appellants and have considered their submissions.

6. Counsel for the petitioner Shri.V.Rajendran referred us to Rule 10 of Chapter XIV A of K.E.R. and also to the provisions contained in the guidelines issued by the Government of Kerala for transfer of Government employees, as per G.O.(P) No.15/89/P&ARD dated 22nd May, 1989. According to him, in view of the provisions contained in Rule 10 of Chapter XIV A of K.E.R., the principles followed in Government Schools shall be observed to the extent possible and the principles of transfer to be so followed, are those laid down by the Government in G.O.(P) No.15/89/P&ARD dated 22nd May, 1989. He would make specific reference to Clause 2(b) of the above Government Order, which states that no employee, who has completed three years of service in a particular station, need necessarily be transferred unless there is a claimant who has worked for three years in an outside station to be provided there, or unless a transfer of the existing incumbent has become necessary in public interest. According

to him, a reading of Clause 2(b) with Rule 10 of Chapter XIV A of K.E.R., means that if there is a claimant, who has worked for three years in an outside station as compared to a particular station where a Teacher has already completed three years, the Teacher who has completed three years in the particular station has to give way for the Teacher, who has worked for three years in an outside station. On this basis, he would contend that since 1997, the petitioner has been working as Sanskrit Teacher at Parapperi and that the third respondent has been working for the last several years at Thrikkideeri and according to him, in view of the position as stated above, the third respondent has to give way for the petitioner.

7. On the other hand, Shri.George Abraham, counsel for the third respondent would submit that Rule 10 of Chapter XIV A of K.E.R. is exhaustive by itself and therefore, the guidelines as laid down by the Government of Kerala from time to time cannot be called in aid by the petitioner. According to him, Rule 10 of Chapter XIV A of K.E.R. provides that in deciding on the transfer of Teachers employed by an Educational Agency having more than one School, the principles followed in Government Schools shall be observed to the extent possible. However, he points out that the concluding portion of Rule 10 of Chapter XIV A of K.E.R. itself says that the principles of transfer

shall be as those enumerated at serial Nos. 1 to 8 in the Rule itself. He would therefore, contend for the position that the principles of transfer to be followed by the Educational Agency, having more than one School, for transfer of any Teacher to another School under the same Educational Agency are only those which are enumerated at serial Nos. 1 to 8. Alternatively, he has pointed out to us that the relevant Government Order that is applicable for transfer of Teachers in Government Schools is G.O.(Rt.) 2672/87/G.Edn. dated 10th September, 1987 and according to him, the said Government Order does not contain a Clause similar to Clause 2(b) of G.O.(P) 15/89/P&ARD dated 22nd May, 2007.

8. On an anxious consideration of the relevant submissions made by counsel on either side, we must confess that we are not in a position to accept the contention of Shri.George Abraham, counsel for the third respondent. Rule 10 of Chapter XIV A of K.E.R. provides as follows:

> "10. Transfers:- Where more than one school is under the same Educational Agency, the Educational Agency may transfer any teacher from one school to another and in deciding on these transfers the principles followed in Government Schools shall be observed to the extent possible. The principles of transfer shall be as follows:-

(1) The chief and formost criterion for transfer of Headmaster shall be the seniority.

(2) Every Headmaster shall be allowed to exercise choices of 3 or more schools.

(3) Exceptions to the seniority criterion shall be the bare minimum. Exception shall include close relatives of Jawans, intercast marriage, physically handicapped, other grounds for special consideration, compassionate grounds, persons who have only one year of service left for retirement etc.

(4) Cases coming under administrative interest shall include unsuitability, allegations of corruption, misuse of official position, disciplinary action, incompetence, and consistent poor performance.

(5) Cases of deviation from the seniority norms shall be appealable before the Director of Public Instruction, who shall decide the case.

(6) All exceptions to the general rule of seniority put together may not exceed 25% transfers.

(7) Mutual transfers on request shall not be entertained.

(8) The number of transfers shall be limited to twice or thrice a year."

A reading of the opening portion of the Rule would show that the rule making authority has not indicated as to what are the principles to be followed by the Educational agencies while transferring Teachers from one School to another under the same Educational Agency. However,

thereafter the Rule indicates what principles are to be followed in the matter of transfer and eight factors have been enumerated in the Rule itself.

9. Rule 10 of Chapter XIV A of K.E.R. came up for interpretation before a Full Bench of this Court in the case of **Valsa** v. **Director of Public Instructions** – 2002(2) K.L.T. 610, where this Court held as follows:

> "This leads to the conclusion that, if there are policy changes made by the Government with respect to the norms of transfer of teachers in Government Schools, they were required to be adopted mutatis mutandis. Since Government policy is never static, and varies from time to time, the rule is so worded as to keep its flexibility so that the changing norms of transfer could be read, mutatis mutandis, into R.10 itself."

Thus, the Full Bench of this Court concluded the that policy changes made by the Government of Kerala with respect to the norms of transfer of Teachers in Government Schools, are applicable in the matter of transfer of Teachers under the Educational Agencies as well. In the light of the law as laid down by the Full Bench, we cannot accept the position canvassed by Shri.George Abraham that the Rule has to be read and understood on its own terms without making reference to relevant Government Orders or the policies as laid down by the

Government from time to time.

10. As regards the Government Orders that are applicable also there is controversy between the parties. However,it need not detain us for long in the light of the Full Bench judgment itself. This judgment has accepted G.O.(Rt.)2672/87/G.Edn. dated 10th September, 1987 as the one that is governing the Teachers of Government Schools, which is made applicable in respect of Teachers under the Educational Agencies by virtue of the provisions contained in Rule 10. A reading of the Government Order reveals that there is no provision in the Government Order regarding transfer of any Teacher, who has completed three years when a claimant who has worked for more than three years in an outside station stakes a claim. Though the position is as above, we notice that Clause 10 of this Government Order provides that the above orders will be implemented subject to general guidelines issued by the Government as per G.O.(P) 2/87/P&ARD dated 1.6.1987. We have gone through G.O.(P) 2/87/P&ARD dated 1.6.1987 and Clause (2) provides that employees who have not completed three years of duty in a station, shall not ordinarily be transferred. Subsequently, by G.O.(P) 89/88/P&ARD dated 11.5.1988, after Clause (2), the following sentence was added:

> "No employee who has completed three years of service in a particular station need necessarily be transferred unless

> there is a claimant who has worked for 3 years in an outside station to be provided there or unless a transfer of the existing incumbent has become necessary in public interest. Change of seats or station within the district will however be made according to administrative convenience".

Thus, the effect of the introduction of the new provision in G.O.(P) 2/97/P&ARD dated 1.6.1987 is that if a Teacher, who has worked for three years in an outside station, has raised a claim for transfer to a particular station and if there is a Teacher who has completed three years in that particular station, the latter has to give way for the former. Of course, any such arrangement is subject to administrative convenience.

11. Thus, in so far as the facts of this case are concerned, it is the accepted position that the petitioner, who had entered service as early as on 30.7.1995, is working at Parapperi since 1997, under the first respondent – Corporate Manager. Thus, she has obviously satisfied the requirements of Rule 10 of Chapter XIV A of K.E.R. read with G.O.(Rt.)2672/87/G.Edn. dated 10th September, 1987. If it is held that she has satisfied the requirements of the Rule and the Government Order, then what remains to be examined is whether by the continuance at the present station, the third respondent has rendered herself liable to be transferred on account of the claim raised

by the petitioner. The third respondent does not have a case that she has not completed three years at Thrikkideeri, the particular station to which the petitioner has raised a claim. In such circumstances, in our considered view, the third respondent has to give way for the petitioner to be accommodated at Thrikkideeri.

12. Counsel for the third respondent raised a contention on the basis that Rule 10 of Chapter XIV A of K.E.R. is only an enabling provision and in terms of the Rules, discretion has been conferred on the Educational Agency and therefore, a Teacher has no vested right to seek transfer invoking Rule 10 of Chapter XI A of K.E.R. in the light of the Government Orders. We have considered this argument and are not in a position to agree with the counsel for the third respondent. As we have already noted, the Full Bench of this Court has already held that the opening sentence of the Rule has been left unchanged, so as to make the policy changes made by the Government with respect to the norms of transfer of Teachers in Government Schools to be adopted mutatis mutandis in the case of Teachers under the Educational Agencies. This Court has held that since the policy is never static and varies from time to time, the Rule is so worded as to keep its flexibility in order to suit the changing norms. The norms

mentioned by the Full Bench of this Court are those contained in G.O. (Rt.)2672/87G.Edn. dated 10th September, 1987, G.O.(P) 2/87/P&ARD dated 1.6.1987 and G.O.(Rt.)89/88/P&ARD dated 11.5.1988. It was by the last Government Order, a Clause was introduced in G.O.(P) 2/87/P&ARD dated 1.6.1987 and the Clause has already been extracted in the earlier part of this judgment. This Clause, as we understand, is to the effect that in the event of a claim being raised by a Teacher, who satisfied the requirements as laid down in the Clause, such Teacher has a legal right to be enforced against a Teacher, who has completed three years in a particular station to which transfer is sought. Therefore, it is not as if a Teacher who seeks transfer in terms of the specific provisions contained in Rule 10 and the Government Orders is without an enforcible right in his favour. He can certainly seek enforcement of this right. It is also contended that what is reflected in the Government Orders referred to above, is only a guideline and therefore, its enforcement cannot be sought by a Teacher. This argument is also difficult to appreciate for the reason that the Government Order is to be read in the light of Rule 10 of Chapter XIV A of K.E.R., and so read, the Government Order gets a statutory flavor. Counsel for the third respondent also raised a plea that in a case of transfer, this Court has only very limited jurisdiction

and therefore, should not interfere with the decision taken by the Departmental Authorities. Though we are conscious of our limitations in a matter of transfer, we should point out that we are not dealing with a case of transfer as such, but only the validity of the decision taken by the Departmental Authorities exercising our power of judicial review conferred under the provisions of the Constitution of India.

13. The last contention raised by the counsel for the third respondent was that the petitioner had alternative statutory remedy available to her and that such remedy was not exhausted. This last argument is also unworthy of acceptance as it was not urged before the learned single Judge. We also note that no such point has been raised in the memorandum of appeal and in the absence of that, we are not inclined to entertain this plea at this stage.

14. The learned single Judge after setting aside the impugned orders, directed reconsideration of the matter once again by the Departmental Authorities. In the light of our findings, we hold that the petitioner is entitled to be transferred to the School under the first respondent at Thrikkideeri. During the arguments, it was pointed out that a vacancy is to arise on 31.3.2008 at Ottappalam to which also the petitioner has made a request to be accommodated. Despite

service of notice, since the Corporate Manager has not entered appearance, we could not ascertain the correctness of this submission. We clarify that if such a vacancy arises, it will be open to the first respondent to consider the petitioner's case for transfer to such vacancy and in such an eventuality, it will also be open to the first respondent to consider whether the third respondent can be accommodated at Thrikkideeri.

In the result W.A.No.228 of 2007stands allowed in the above terms and W.A.No.518 of 2007 will stand dismissed. No order as to costs.

P.R.Raman,
Judge.

Antony Dominic,
Judge.

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